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General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Education.

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Judicial standards of procedure and substance are presented to encourage consistency in the United States District Court for the Western District of Missouri, in cases of student discipline in tax supported institutions of higher learning. The relationship between education and the courts is discussed, concluding that only where erroneous and unwise actions in the field of education deprive students of federally protected rights or privileges does a federal court have power to intervene in the educational process. The 16 lawful missions of tax supported higher education are summarized. The obligations of the student are discussed with respect to these missions, concluding that no student may, without liability to lawful discipline, intentionally act to impair or prevent the accomplishment of any lawful mission, process, or function of an educational institution. Student discipline is considered a part of the teaching process, and not comparable to criminal law processes. The procedural and jurisdictional standards stated apply to (1) jurisdiction, (2) nature of action, (3) the question of exhaustion of remedies, (4) right to jury trial, (5) trial of equitable actions, and (6) the question of mootness. Provisional substantive standards in student discipline cases under Section 1938, Title 42, are discussed. (BP)

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U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION

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IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
EN BANC

GENERAL ORDER ON JUDICIAL STANDARDS OF PROCEDURE AND SUBSTANCE IN REVIEW OF STUDENT DISCIPLINE IN TAX SUPPORTED INSTITUTIONS OF HIGHER EDUCATION

The recent filing in this Court of three major cases for review of student discipline in tax supported educational institutions of higher learning has made desirable hearings by this Court en banc in two such cases, namely Civil Actions No. 16852-4 (Western Division) and No. 1259 (Central Division). These hearings were desirable to develop uniform standards to be applied in the two civil actions and to ensure, as far as practicable, that in the future decisions in similar cases in the four divisions of this Court would be consistent.

Because of the great interest and because of the violence which has ensued in the educational institutions elsewhere, counsel for all interested tax supported institutions, counsel for any privately supported educational institution, counsel for the American Civil Liberties Union, the Attorney General of Missouri, and counsel for any officially elected or recognized student government or faculty association, were afforded an opportunity to file briefs and address oral argument to the federal questions of substance and procedure presented by cases involving student discipline. After consideration of the briefs and arguments this Court en banc does hereby

ORDER that hereafter, until further Order of the Court en banc, in the absence of exceptional circumstances, the judicial standards of procedure and substance, enunciated in the attached Memorandum, be treated as applicable to cases in this Court wherein questions involving disciplinary action of students in tax supported institutions of higher learning are presented; provided, however, that in any civil action, the jurisdiction and powers of

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the individual judge to whom the case is assigned are not affected hereby; and provided further, that no party to an action be precluded from submitting and requesting therein a decision de novo inconsistent with these standards.

William H. Becker, Chief Judge

John W. Oliver, District Judge

William R. Collinson, District Judge

Elmo B. Hunter, District Judge

MEMORANDUM ON JUDICIAL STANDARDS OF PROCEDURE AND SUBSTANCE IN REVIEW OF STUDENT DISCIPLINE IN TAX SUPPORTED INSTITUTIONS OF HIGHER LEARNING

DEFINITIONS

"Education" as used herein means tax supported formal higher education unless the context indicates another meaning.

"Institution" and 'educational institution" as used herein mean a tax supported school, college, university, or multiversity.

"Mission" as used herein means a goal, purpose, task, or objective.

INTRODUCTION

The number of actions for review of student disciplinary action has been increasing in this and other courts as shown by the cases in this Court and the reported cases.[1]

These cases reflect rapid development and much controversy concerning appropriate procedural and substantive standards of judicial review in such cases. Because of the importance in this district of clearly enunciated reliable standards, this Court scheduled hearings in the second Esteban case and in the Scoggin case for the purpose of hearing arguments and suggestions of the parties and of interested amici curiae on the standards which would be applied regardless of the judge to whom the cases are assigned by lot. This was done for the purpose of uniformity of decision in this district.

The following memorandum represents a statement of judicial standards of procedure and substance applicable, in the absence of exceptional circumstances, to actions concerning discipline of students in tax supported educational institutions of higher learning.

RELATIONS OF COURTS AND EDUCATION

Achieving the ideal of justice is the highest goal of

humanity. Justice is not the concern solely of the courts. Education is equally concerned with the achievement of ideal justice. The administration of justice by the courts in the United States represents the people's best efforts to achieve the ideal of justice in the field of civil and criminal law. It is generally accepted that the courts are necessary to this administration of justice and for the protection of individual liberties. Nevertheless, the contributions of the modern courts in achieving the ideals of justice are primarily the products of higher education. The modern courts are, and will continue to be, greatly indebted to higher education for their personnel, their innovations, their processes, their political support, and their future in the political and social order. Higher education is the primary source of study and support of improvement in the courts. For this reason, among others, the courts should exercise caution when importuned to intervene in the important processes and functions of education. A court should never intervene in the processes of education without understanding the nature of education.

Before undertaking to intervene in the educational processes, and to impose judicial restraints and mandates on the educational community, the courts should acquire a general knowledge of the lawful missions and the continually changing processes, functions, and problems of education. Judicial action without such knowledge would endanger the public interest and be likely to lead to gross injustice.

Education is the living and growing source of our progressive civilization, of our open repository of increasing knowledge, culture and our salutary democratic traditions. As such, education deserves the highest respect and the fullest protection of the courts in the performance of its lawful missions.

There have been, and no doubt in the future there will be, instances of erroneous and unwise misuse of power by those invested

with powers of management and teaching in the academic community, as in the case of all human fallible institutions. When such misuse of power is threatened or occurs, our political and social order has made available a wide variety of lawful, non-violent, political, economic, and social means to prevent or end the misuse of power. These same lawful, non-violent, political, economic, and social means are available to correct an unwise, but lawful choice of educational policy or action by those charged with the powers of management and teaching in the academic community. Only where the erroneous and unwise actions in the field of education deprive students of federally protected rights or privileges does a federal court have power to intervene in the educational process.[2]

LAWFUL MISSIONS OF TAX SUPPORTED HIGHER EDUCATION

The lawful missions of tax supported public education in the United States are constantly growing and changing. For the purposes of this analysis, it is sufficient to note some of the widely recognized traditional missions of tax supported higher education in this country. Included in these lawful missions of education, the following are summarized:

(1) To maintain, support, critically examine, and to improve the existing social and political system;

(2) To train students and faculty for leadership and superior service in public service, science, agriculture, commerce and industry;

(3) To develop students to well rounded maturity, physically, socially, emotionally, spiritually, intellectually and vocationally;

(4) To develop, refine and teach ethical and cultural values;

(5) To provide fullest possible realization of democracy in every phase of living;

(6) To teach principles of patriotism, civil obligation and respect for the law;

(7) To teach the practice of excellence in thought, behavior and performance;

(8) To develop , cultivate, and stimulate the use of imagination;

(9) To stimulate reasoning and critical faculties of students and to encourage their use in improvement of the existing political and social order;

(10) To develop and teach lawful methods of change and improvement in the existing political and social order;

(11) To provide by study and research for increase of knowledge;

(12) To provide by study and research for development and improvement of technology, production and distribution for increased national production of goods and services desirable for national civilian consumption, for export, for exploration, and for national military purposes;

(13) To teach methods of experiment in meeting the problems of a changing environment;

(14) To promote directly and explicitly international understanding and cooperation;

(15) To provide the knowledge, personnel, and policy for planning and managing the destiny of our society with a maximum of individual freedom; and

(16) To transfer the wealth of knowledge and tradition from one generation to another.

The tax supported educational institution is an agency of the national and state governments. Its missions include, by teaching, research and action, assisting in the declared purposes of government in this nation, namely:

To form a more perfect union,

To establish justice,

To insure domestic tranquility,

To provide for the common defense,

To promote the general welfare, and

To secure the blessing of liberty to ourselves and to posterity.

The nihilist and the anarchist, determined to destroy the existing political and social order, who directs his primary attack on the educational institutions, understands fully the mission of education in the United States.

Federal law recognizes the powers of the tax supported institutions to accomplish these missions and has frequently furnished economic assistance for these purposes.

The genius of American education employing the manifold ideas and works of the great Jefferson,[4] Mann, Dewey and many others living, has made the United States the most powerful nation in history. In so doing, it has in a relatively few years expanded the area of knowledge at a revolutionary rate.

With education the primary force, the means to provide the necessities of life and many luxuries to all our national population, and to many other peoples, has been created. This great progress has been accomplished by the provision to the educational community of general support, accompanied by diminishing interference in educational processes by political agencies outside the academic community.

If it is true, as it well may be, that man is in a race between education and catastrophe, it is imperative that educational institutions not be limited in the performance of their lawful missions by unwarranted judicial interference.

OBLIGATIONS OF A STUDENT

Attendance at a tax supported educational institution of higher learning is not compulsory. The federal constitution protects the equality of opportunity of all qualified persons to attend. Whether this protected opportunity be called a qualified "right" or "privilege" is unimportant. It is optional and voluntary.

The voluntary attendance of a student in such institutions is a voluntary entrance into the academic community. By such voluntary entrance, the student voluntarily assumes obligations of performance and behavior reasonably imposed by the institution of choice relevant to its lawful missions, processes, and functions. These obligations are generally much higher than those imposed on

all citizens by the civil and criminal law. So long as there is no invidious discrimination, no deprival of due process, no abridgement of a right protected in the circumstances, and no capricious, clearly unreasonable or unlawful action employed, the institution may discipline students to secure compliance with these higher obligations as a teaching method or to sever the student from the academic community.

No student may, without liability to lawful discipline, intentionally act to impair or prevent the accomplishment of any lawful mission, process, or function of an educational institution.

THE NATURE OF STUDENT DISCIPLINE COMPARED TO CRIMINAL LAW

The discipline of students in the educational community is, in all but the case of irrevocable expulsion, a part of the teaching process. In the case of irrevocable expulsion for misconduct, the process is not punitive or deterrent in the criminal law sense, but the process is rather the determination that the student is unqualified to continue as a member of the educational community. Even then, the disciplinary process is not equivalent to the criminal law processes of federal and state criminal law. For, while the expelled student may suffer damaging effects, sometimes irreparable, to his educational, social, and economic future, he or she may not be imprisoned, fined, disenfranchised, or subjected to probationary supervision. The attempted analogy of student discipline to criminal proceedings against adults and juveniles is not sound.

In the lesser disciplinary procedures, including but not limited to guidance conseling, reprimand, suspension of social or academic privileges, probation, restriction to campus and dismissal with leave to apply for readmission, the lawful aim of discipline may be teaching in performance of a lawful mission of the institution.[5] The nature and procedures of the disciplinary process in such cases should not be required to conform to federal processes

of criminal law, which are far from perfect, and designed for circumstances and ends unrelated to the academic community. By judicial mandate to impose upon the academic community in student discipline the intricate, time consuming, sophisticated procedures, rules and safeguards of criminal law would frustrate the teaching process and render the institutional control impotent.

A federal court should not intervene to reverse or enjoin disciplinary actions relevant to a lawful mission of an educational institution unless there appears one of the following:

(1) a deprival of due process, that is, fundamental concepts of fair play;

(2) invidious discrimination, for example, on account of race or religion;

(3) denial of federal rights, constitutional or statutory, protected in the academic community; or

(4) clearly unreasonable, arbitrary or capricious action.

PROVISIONAL PROCEDURAL AND JURISDICTIONAL STANDARDS

In the absence of exceptional circumstances these standards are applicable.

Jurisdiction

1. Under Sections 1343(3), Title 28, and 1983, Title 42, U.S.C., and also in appropriate cases under Sections 2201, 1331(a) or 1332(a), Title 28, U.S.C., the United States District Courts have jurisdiction to entertain and determine actions by students who claim unreasonably discriminatory, arbitrary or capricious actions lacking in due process and depriving a student of admission to or continued attendance at tax supported institutions of higher education.

Nature of Action

2. The action may be

   (a) Under Section 1983, an action at law for damages triable by a jury;

(b) Under Section 1983, a suit in equity; or

(c) Under Section 1893 and Section 2201, a declaratory judgment action, which may be legal or equitable in nature depending on the issues therein.

Question of Exhaustion of Remedies

3. In an action at law or equity under Section 1983, Title 42, U.S.C., the doctrine of exhaustion of state judicial remedies is not applicable. The fact that there is an existing state judicial remedy for the alleged wrong is no ground for stay or dismissal.[6]

Ordinarily until the currently available adequate and effective institutional processes have been exhausted, the disciplinary action is not final and the controversy is not ripe for determination.

Right to Jury Trial

4. In an action at law under Section 1983, the issues are triable by jury and equitable defenses are not available.

Trial of Equitable Actions

5. In an equitable action by a court without a jury under Section 1983, equitable doctrines and defenses are applicable.

(a) There must be an inadequate remedy at law.

(b) The plaintiff must be in a position to secure equitable relief under equitable doctrines, for example, must come with "clean hands."

Question of Mootness

6. In an action at law or equity under Section 1983, Title 42, U.S.C., to review severe student disciplinary action the doctrine of mootness is not applicable when the action is timely filed.[7]

PROVISIONAL SUBSTANTIVE STANDARDS IN STUDENT DISCIPLINE CASES UNDER SECTION 1983, TITLE 42

1. Equal opportunity for admission and attendance by qualified persons at tax supported state educational institutions of

higher learning is protected by the equal privileges and immunities, equal protection of laws, and due process clauses of the Fourteenth Amendment to the United States Constitution. It is unimportant whether this protected opportunity is defined as a right or a privilege. The protection of the opportunity is the important thing.

2. In an action under Section 1983 issues to be determined will be limited to determination whether, under color of any statute, ordinance, regulation, custom or usage of a state ("state action"), a student has been deprived of any rights, privileges, or immunities secured by the Constitution and laws of the United States.

3. State constitutional, statutory, and institutional delegation and distribution of disciplinary powers are not ordinarily matters of federal concern. Any such contentions based solely on claims of unlawful distribution and violation of state law in the exercise of state disciplinary power should be submitted to the state courts. Such contentions do not ordinarily involve a substantial federal question of which the district court has jurisdiction under Section 1983. This rule does not apply, however, to actions based on diversity of jurisdiction under Sections 1331, 1332 or 2201, Title 28, U.S.C.

4. Disciplinary action by any institution, institutional agency, or officer will ordinarily be deemed under color of a statute, ordinance, regulation, custom or usage of a state ("state action") within the meaning of Section 1983, Title 42, U.S.C.

5. In the field of discipline, scholastic and behavioral, an institution may establish any standards reasonably relevant to the lawful missions, processes, and functions of the institution. It is not a lawful mission, process, or function of an institution to prohibit the exercise of a right guaranteed by the Constitution or a law of the United States to a member

of the academic community under the circumstances. Therefore, such prohibitions are not reasonably relevant to any lawful mission, process or function of an institution.

6. Standards so established may apply to student behavior on and off the campus when relevant to any lawful mission, process, or function of the institution. By such standards of student conduct the institution may prohibit any action or omission which impairs, interferes with, or obstructs the missions, processes and functions of the institution.

Standards so established may require scholastic attainments higher than the average of the population and may require superior ethical and moral behavior. In establishing standards of behavior, the institution is not limited to the standards or the forms of criminal laws.

7. An institution may establish appropriate standards of conduct (scholastic and behavioral) in any form and manner reasonably calculated to give adequate notice of the scholastic attainments and behavior expected of the student.

The notice of the scholastic and behavioral standards to the students may be written or oral, or partly written and partly oral, but preferably written. The standards may be positive or negative in form.

Different standards, scholastic and behavioral, may be established for different divisions, schools, colleges, and classes of an institution if the differences are reasonably relevant to the missions, processes, and functions of the particular divisions, schools, colleges, and classes concerned.

8. When a challenged standard of student conduct limits or forbids the exercise of a right guaranteed by the Constitution or a law of the United States to persons generally, the institution must demonstrate that the standard is recognized as relevant to a lawful mission of the institution, and is

recognized as reasonable by some reputable authority or school of thought in the field of higher education.[8] This may be determined by expert opinion or by judicial notice in proper circumstances. It is not necessary that all authorities and schools of thought agree that the standard is reasonable.

9. Outstanding educational authorities in the field of higher education believe, on the basis of experience, that detailed codes of prohibited student conduct are provocative and should not be employed in higher education.[9]

For this reason, general affirmative statements of what is expected of a student may in some areas be preferable in higher education. Such affirmative standards may be employed, and discipline of students based thereon.

10. The legal doctrine that a prohibitory statute is void if it is overly broad or unconstitutionally broad does not, in the absence of exceptional circumstances, apply to standards of student conduct. The validity of the form of standards of student conduct, relevant to the lawful missions of higher education, ordinarily should be determined by recognized educational standards.

11. In severe cases of student discipline for alleged misconduct, such as final expulsion, indefinite or long-term suspension, dismissal with deferred leave to reapply, the institution is obligated to give to the student minimal procedural requirements of due process of law.[10] The requirements of due process do not demand an inflexible procedure for all such cases. "But 'due process' unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances."[11] Three minimal requirements apply in cases of severe discipline, growing out of fundamental conceptions of fairness implicit in procedural due process. First, the student should be given adequate notice in writing of the specific

ground or grounds and the nature of the evidence on which the disciplinary proceedings are based. Second, the student should be given an opportunity for a hearing in which the disciplinary authority provides a fair opportunity for hearing of the student's position, explanations and evidence.[12] The third requirement is that no disciplinary action be taken on grounds which are not supported by any substantial evidence.[13] Within limits of due process, institutions must be free to devise various types of disciplinary procedures relevant to their lawful missions, consistent with their varying processes and functions, and not an unreasonable strain on their resources and personnel.

There is no general requirement that procedural due process in student disciplinary cases provide for legal representation, a public hearing, confrontation and cross-examination of witnesses, warnings about privileges, self-incrimination, application of principles of former or double jeopardy, compulsory production of witnesses, or any of the remaining features of federal criminal jurisprudence.[14] Rare and exceptional circumstances, however, may require provision of one or more of these features in a particular case to guarantee the fundamental concepts of fair play.

It is encouraging to note the current unusual efforts of the institutions and the interested organizations which are devising and recommending procedures and policies in student discipline which are based on standards, in many features, far higher than the requirements of due process.

Joint Statement on Rights and Freedoms of Students, 54 A.A.U.P. Bulletin No. 2, Summer 1968, 258, a report of a joint committee of representatives of the U.S. National Students Association, Association of American Colleges, American Association of University Professors, National Association of Student Personnel Administrators, National Association of

Womens Deans and Counselors, American Association of Higher Education, Jesuit Education Association, American College Personnel Association, Executive Committee, College and University Department, National Catholic Education Association, Commission on Student Personnel, American Association of Junior Colleges; University of Missouri, Provisional Rules of Procedure In Student Disciplinary Matters.

Many of these recommendations and procedures represent wise matters of policy and procedure far above the minimum requirements of federal law, calculated to ensure the confidence of all concerned with student discipline.

The excellent briefs and arguments, including those of amici curiae, have been of great assistance in the preparation of this memorandum.

FOOTNOTES

1. Esteban, et al. v. Central Missouri State College, et al., (W.D. Mo., 1967) 277 F.Supp. 649; Esteban, et al. v. Central Missouri State College, (W.D. Mo.) Civil Action No. 16852-4 (pending herein); Scoggin, et al. v. Lincoln University, et al., (W.D. Mo.) Civil Action No. 1259 (pending herein); Barker v. Hardway, (C.A. 4, 1968) ____ F.2d ____, No. 12,600 (not yet reported), affirming (S.D. W.Va., 1968) 283 F.Supp. 228; Madera v. Board of Education of City of New York, (C.A. 2, 1967) 386 F.2d 778, reversing (S.D. N.Y., 1967) 267 F.Supp. 356; Dixon v. Alabama State Board of Education, (C.A. 5, 1961) 294 F.2d 150, reversing (M.D. Ala., 1960) 186 F.Supp. 945; Moore v. Student Affairs Committee of Troy State University, (M.D. Ala., 1968) 284 F.Supp. 725; Zanders v. Louisiana State Board of Education, (W.D. La., 1968) 281 F.Supp. 747; Buttny v. Smiley, (D. Colo., 1968) 281 F.Supp. 280; Dickson v. Sitterson, (M.D. N.C., 1968) 280 F.Supp. 486; Jones v. State Board of Education of and for the State of Tennessee, (M.D. Tenn., 1968) 279 F.Supp. 190; Dickey v. Alabama State Board of Education, (M.D. Ala., 1967) 273 F.Supp. 613; Hammond v. South Carolina State College (D. S.C., 1967) 272 F.Supp. 947; Due v. Florida A. and M. University, (N.D. Fla., 1963) 233 F. Supp. 396.

2. These principles are not applicable where influences outside the educational community seek to impose unlawful and irrelevant conditions on the educational institution. Cf. Dickson v. Sitterson, (M.D. N.C.) 280 F.Supp. 486, in which the legislature of North Carolina attempted by statute to limit protected free speech in the facilities of the University of North Carolina.

3. In addition to standard encyclopedic treatises some authoritative statements of the missions of tax supported education may be found in the following works and documents: Report of Commissioners Appointed To Fix The Site of The University of Virginia found in Crusade Against Ignorance - Thomas Jefferson on Education, (Teachers College Columbia University 1961), 114-118; Cremin, The Genius of American Education, (Vintage Books 1966); Higher Education for American Democracy: The Report of President's Commission, I. Establishing the Goals, (Washington Government Printing Office 1947); The Student Personnel Point of View, (American Counsel on Education, Washington, D.C., 1938 Revised 1949); Einstein, Out of My Later Years, (Philosophical Library, New York 1950) 31; Gardner, Excellence: Can We Be Equal and Excellent Too? (Harper and Bros., New York 1961); Dewey, Democracy and Education, (Appleton Century Crofts, New York 1950); Mueller, Student Personnel Work On Higher Education (Houghton Mifflin, Boston 1961) 4-10; Hatch and Stefflre, Administration of Guidance Services. (Prentice-Hall, Inc. 1965, 2 ed., Englewood, N.J.) 3-16.

4. Thomas Jefferson, the earliest and greatest advocate of tax supported higher education and the unequal defender of personal liberty, reported in his correspondence on an early instance of a student riot at his creation, the University of Virginia, in these words:

From letter of August 27, 1825, to Ellen W. Coolidge:

"Our University goes on well. We have passed the limit of 100 students some time since. As yet it has been a model

of order and good behavior, having never yet had occasion for the exercise of a single act of authority. We studiously avoid too much government. We treat them as men and gentlemen, under the guidance mainly of their own discretion. They so consider themselves, and make it their pride to acquire that character for their institution. In short, we are as quiet on that head as the experience of six months only can justify. Our professors, too, continue to be what we wish them. Mr. Gilmer accepts the Law chair, and all is well."

From letter of October 13, 1825, to Joseph Coolidge, Jr.:

"The news of our neighborhood can hardly be interesting to you, except what may relate to our University, in which you are so kind as to take an interest. And it happens that a serious incident has just taken place there, which I will state to you the rather, as of the thousand versions which will be given not one will be true. My position enables me to say what is so, but with the most absolute concealment from whence it comes; regard to my own peace requiring that,—except with friends whom I can trust and wish to gratify with the truth.

"The University had gone on with a degree of order and harmony which had strengthened the hope that much of self government might be trusted to the discretion of the students of the age of 16 and upwards, until the 1st instant. In the night of that day a party of fourteen students, animated first with wine, masked themselves so as not to be known, and turned out on the lawn of the University, with no intention, it is believed, but of childish noise and uproar. Two professors hearing it went out to see what was the matter. They were received with insult, and even brick-bats were thrown at them. Each of them seized an offender, demanded their names (for they could not distinguish them under their disguise), but were refused, abused, and the culprits calling on their companions for a rescue, got loose, and withdrew to their chambers. The Faculty of Professors met the next day, called the whole before them, and in address, rather harsh, required them to denounce the offenders. They refused, answered the address in writing and in the rudest terms, and charged the Professors themselves with false statements. Fifty others, who were in their rooms, no ways implicated in the riot and knowing nothing about it, immediately signed the answer, making common cause with the rioters, and declaring their belief of their assertions in opposition to those of the Professors. The next day chanced to be that of the meeting of the Visitors; the Faculty sent a deputation to them, informing them of what had taken place. The Visitors called the whole body of students before them, exhorted them to make known the persons masked, the innocent to aid the cause of order by bearing witnesses to the truth, and the guilty to relieve their innocent brethren from censures which they were conscious that themselves alone deserved. On this the fourteen maskers stepped forward and avowed themselves the persons guilty of whatever had passed, but denying that any trespass had been committed. They were desired to appear before the Faculty, which they did. On the evidence resulting from this enquiry, three, the most culpable, were expelled; one of them, moreover, presented by the grand jury for civil punishment (for it happened that the district court was then about to meet). The eleven other maskers were sentenced to suspensions or reprimands, and the fifty who had so gratuitously obtruded their names into the offensive paper retracted them, and so the matter ended.

"The circumstances of this transaction enabled the Visitors to add much to the strictness of their system as yet new. The students have returned into perfect order under a salutary conviction they had not before felt that the laws will in future be rigorously enforced, and the institution is strengthened by the firmness manifested by its authorities on the occasion. It cannot, however, be expected that all breaches of order can be made to cease at once, but from the vigilance of the Faculty and energy of the civil power their restraint may very soon become satisfactory. It is not perceived that this riot has been more serious than has been experienced by other seminaries; but, whether more or less so, the exact truth should be told, and the institution be known to the public as neither better nor worse than it really is."

From letter of November 14, 1825, to Ellen W. Coolidge:

"My Dear Ellen,—In my letter of October 13 to Mr. Coolidge, I gave an account of the riot we had had at the University and of its termination. You will both, of course, be under anxiety till you know how it has gone off. With the best effects in the world, having let it be understood from the beginning that we wished to trust very much to the discretion of the students themselves for their own government. With about four-fifths of them this did well, but there were about fifteen or twenty bad subjects who were disposed to try whether our indulgence was without limit. Hence the licentious transaction of which I gave an account to Mr. Coolidge; but when the whole mass saw the serious way in which that experiment was met, the Faculty of Professors assembled, the Board of Visitors coming forward in support of that authority, a grand jury taking up the subject, four of the most guilty expelled, the rest reprimanded, severer laws enacted and a rigorous execution of them declared in future,—it gave them a shock and struck a terror, the most severe as it was less expected. It determined the well-disposed among them to frown upon everything of the kind hereafter, and the ill-disposed returned to order from fear, if not from better motives. A perfect subordination has succeeded, entire respect towards the professors, and industry, order, and quiet the most exemplary, has prevailed ever since. Every one is sensible of the strength which the institution has derived from what appeared at first to threaten its foundation. We have no further fear of anything of the kind from the present set, but as at the next term their numbers will be more than doubled by the accession of an additional band, as unbroken as these were, we mean to be prepared, and to ask of the legislature a power to call in the civil authority in the first instant of disorder, and to quell it on the spot by imprisonment and the same legal coercions provided against disorder generally committed by other citizens, from whom, at their age, they have no right to distinction."

All the foregoing quotations are found in The Writings of Thomas Jefferson, Library Edition, The Thomas Jefferson Memorial Association, Washington, D.C., 1904, Volume 18, pp. 341-348.

5. Brady and Snoxell, Student Discipline in Higher Education, American Personnel and Guidance Association, 1965; Williamson, Student Personnel Services in Colleges and Universities, McGraw Hill, 1961, pp. 141-212; Mueller, Student Personnel Work in Higher Education, Houghton Mifflin, Boston, 1961, pp. 352-355;

Hatch and Stefflre, Administration of Guidance Services, Prentice-Hall, Inc., 1965, 2d ed., Englewood, N.J., pp. 16-27; Williamson and Foley, Counseling and Discipline, McGraw Hill, New York, 1949, pp. 1-49; Baaken, The Legal Basis For College Student Personnel Work, 2d ed. 1968, The American Personnel and Guidance Association, Washington, D.C.; Callis, Educational Aspects of In Loco Parentis, 8 Journal of College Student Personnel, 231-233, July 1964; Cf. Van Alstyne, Student Academic Freedom and Rule Making Powers of Public Universities, 2 Law in Transition Quarterly 1; Developments in the Law - Academic Freedom, 81 Harvard Law Review 1045-1159.

6. Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473, 5 L. Ed. 2d 492; Damico v. California, 389 U.S. 416, 88 S.Ct. 526, 19 L. Ed. 2d 647; McNeese v. Board of Education, 373 U.S. 668, 83 S.Ct. 1433, 10 L. Ed. 2d 622.

7. Cf. Carafas v. LaValle, 391 U.S. 234 (1968), overruling Parker v. Ellis, 362 U.S. 574 (1960), and Sibron v. New York, 392 U.S. 40 (1968), qualifying St. Pierre v. United States, 319 U.S. 41 (1943).

8. Cf. Van Alstyne, Student Academic Freedom and Rule Making Powers of Public Universities: Some Constitutional Considerations, 2 Law in Transition Quarterly 1, l.c. 23-25.

9. Brady and Snoxell, Student Personnel Work In Higher Education, 378 (Houghton-Mifflin, Boston, 1961).

10. Dixon v. Alabama Board of Education (C.A. 5) 294 F.2d 150, cert. den. 368 U.S. 930, 83 S.Ct. 368, 7 L. Ed. 2d 193 (1961); Esteban v. Central Missouri State College (W.D. Mo., 1967) 277 F.Supp. 649.

11. Cf. concurring opinion in Joint Anti Fascist Refugee Committee v. McGrath, 341 U.S. 123, 71 S.Ct. 624, 95 L. Ed. 817; Cafeteria and Restaurant Workers Union v. McElroy, 367 U.S. 886, 81 S.Ct. 1743, 6 L. Ed. 1230, l.c. 1236.

12. The first two requirements are supported by Dixon v. Alabama Board of Education, supra, and Esteban v. Central Missouri State College, supra.

13. Cf. Thompson v. City of Louisville, 362 U.S. 199, 80 S.Ct. 624, 4 L. Ed. 2d 654, l.c. 659. In citing the Thompson case there is no intention to require adherence to the judicial exclusionary rules of evidence.

14. Dixon v. Alabama Board of Education, supra; Madera v. Board of Education, supra.